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HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET NY 11791

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OFFICE OF PETITIONS
ON PETITION

In re Application of
Todd Peavey et al.
Application No. 10/634,475
Filed: August 4, 2003
Attorney's Docket No. 760-137 CON

This is a decision on the petition filed January 2, 2004 under 37 CFR 1.53, in response to the "Notice to File Missing Parts" mailed November 3, 2003.

The petition is **DISMISSED**.

The application was filed August 4, 2003. However, on November 11, 2003, the Office of Initial Patent Examination mailed a "Notice" stating that the application had been accorded a filing date of August 4, 2003, and advising applicants that Figures 2E & 2D described in the specification appeared to have been omitted.

In response, the present petition was filed. Petitioner explains that no figures were missing on August 4, 2003. Instead, the application papers (specifically page 2 of 3) submitted, included two figures described in the specification as figures 2D and 2E but which failed to be so labeled. Petitioner explains that during production, the label identifying the bottom figures (2D & 2E) was mistakenly cropped. Additionally, petitioner's submission of an itemized post card receipt is acknowledged but is not considered as persuasive. The postcard indicates that three (3) sheets of drawings with a total of three (3) figures was included with the papers filed on August 4, 2003. However, the postcard did not properly itemize the figures. For an example, page 2 of 3, the sheet in issue, contained six figures (2, 2A, 2B, 2C, 2D & 2E).

It is obvious from the petition however, that no figures were actually missing on August 4, 2003. Rather, the figures were mislabeled and as a result of the applicants' filing error, failed to identify two of the figures on sheet 2 of 3 as 2D & 2E. However, the "Notice" mailed on November 11, 2003, was correct in stating that Figures 2D & 2E described in the specification appeared to have been omitted. Therefore, the "Notice" was properly mailed and will not be withdrawn.

The present petition was not necessitated by any error on the part of the Office and the \$130.00 petition was required upon filing of the petition. Thus, the \$130.00 petition fee will not be refunded.

The Office of Initial Patent Examination will be notified to process the application with the filing date of August 4, 2003 and to use the application papers filed on that date and the corrected page 2 of 3 filed on January 2, 2004 with the petition.

Telephone inquiries related to this matter should be directed to the undersigned Petitions Attorney at 703-305-4497.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions